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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No.

2011-963

13 **LINDA ANN MEMMER**
aka LINDA ANN SPARKES

ACCUSATION

14 **4242 Bartleson Road**
15 **Sebastopol, CA 95472**
Registered Nurse License No. 515000

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about August 25, 1995, the Board of Registered Nursing issued Registered
24 Nurse License Number 515000 to Linda Ann Memmer, aka Linda Ann Sparkes ("Respondent").
25 The Registered Nurse License was in full force and effect at all times relevant to the charges
26 brought herein and will expire on February 28, 2013, unless renewed.

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1 situation which the nurse knew, or should have known, could have jeopardized the client's health
2 or life."

3 8. California Code of Regulations, title 16, section 1443, states:

4 "As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the
5 failure to exercise that degree of learning, skill, care and experience ordinarily possessed and
6 exercised by a competent registered nurse as described in Section 1443.5."

7 9. California Code of Regulations, title 16, section 1443.5 states:

8 "A registered nurse shall be considered to be competent when he/she consistently
9 demonstrates the ability to transfer scientific knowledge from social, biological and physical
10 sciences in applying the nursing process, as follows:

11 ...

12 "(3) Performs skills essential to the kind of nursing action to be taken, explains the health
13 treatment to the client and family and teaches the client and family how to care for the client's
14 health needs.

15 ...

16 "(5) Evaluates the effectiveness of the care plan through observation of the client's physical
17 condition and behavior, signs and symptoms of illness, and reactions to treatment and through
18 communication with the client and health team members, and modifies the plan as needed."

19 ...

20 10. Section 2762 of the Code states:

21 "In addition to other acts constituting unprofessional conduct within the meaning of this
22 chapter [Nursing Practice Act], it is unprofessional conduct for a person licensed under this
23 chapter to do any of the following:

24 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
25 physician and surgeon . . . administer to himself or herself, or furnish or administer to another,
26 any controlled substance as defined in Division 10 [commencing with section 11000] of the
27 Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

28 ...

1 “(e) Falsity, or make grossly inconsistent, or unintelligible entries in any hospital, patient,
2 or other record pertaining to the substances described in subdivision (a) of this section.”

3 COST RECOVERY

4 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
5 administrative law judge to direct a licentiate found to have committed a violation or violations of
6 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
7 enforcement of the case.

8 DRUGS

9 12. “Norco” is an opioid analgesic used to treat moderate to moderately severe pain.¹
10 It is classified as a Schedule III controlled substance pursuant to Health and Safety Code Section
11 11056, subdivision (e)(4) and is a dangerous drug pursuant to Business and Professions Code
12 Section 4022.

13 13. “Percocet” is an opioid analgesic used to treat moderate to moderately severe pain.
14 It is classified as a Schedule II controlled substance pursuant to Health and Safety Code Section
15 11055, subdivision (b)(1)(N) and is a dangerous drug pursuant to Business and Professions Code
16 Section 4022.

17 FIRST CAUSE FOR DISCIPLINE

18 (Gross Negligence/Incompetence – Failure To Document Administration of Controlled
19 Substances)

20 14. Respondent is subject to discipline under Code section 2761(a)(1), on the grounds of
21 gross negligence and/or incompetence in that while employed as a registered nurse at Santa Rosa
22 Memorial Hospital, in Santa Rosa, California, she failed to document the administration of
23 controlled substances withdrawn for patients under her care. Respondent’s failure to document
24 the disposition of controlled substances in the patients’ Medical Administration Record (“MAR”)
25 and/or on the pain flow sheet could have jeopardized the health of said patients by confusing

26 ¹ Norco is a medication that comes in different strengths related to the amount of the
27 opioid hydrocodone. “Norco 5” consists of hydrocodone 5 milligrams with Tylenol 325
28 milligrams and is prescribed for moderate pain. “Norco 10” consists of hydrocodone 10
milligrams with Tylenol 325 milligrams and is prescribed for severe pain.

1 other staff as to when patients were last medicated and with what substances. The facts in
2 support of this cause for discipline are as follows:

3 **Patient 3:**

4 a. On June 21, 2008, at 8:30 a.m., Respondent noted on Patient 3's pain flow sheet
5 that she administered one tablet of Norco 10. However, there was no reference on Patient 3's
6 MAR that this medication had been administered.

7 b. At 9:00 a.m., on June 21, 2008, Patient 3 was discharged home. At 10:11 a.m.,
8 Respondent withdrew one tablet of Norco 5 for Patient 3. However, Respondent failed to
9 account for disposition of this medication in any hospital or patient record.

10 **Patient 10:**

11 a. On August 7, 2008, at 8:03 a.m., Respondent withdrew one tablet of Norco 5 for
12 Patient 10. However, Respondent failed to account for disposition of this medication in any
13 hospital or patient record.

14 **Patient 15:**

15 a. On August 28, 2008, at 10:05 a.m., Respondent withdrew one tablet of Norco 5
16 for Patient 15. However, Respondent failed to account for disposition of this medication in any
17 hospital or patient record.

18 **Patient 16:**

19 a. On August 28, 2008, at 9:30 a.m., Respondent administered one tablet of Norco 5
20 to Patient 16. At 11:02 a.m., Respondent withdrew one tablet of Norco 10 for Patient 16. Four
21 minutes later, at 11:06 a.m., she withdrew one tablet of Norco 5, and at 12:51 p.m., she
22 withdrew one tablet of Norco 5 for Patient 16. However, Respondent did not record on Patient
23 16's MAR that she had administered any of these medications. In addition, for the medications
24 withdrawn at 11:02 a.m., and at 11:06 a.m., there was no notation on the pain flow sheet that
25 these medications were administered or any documentation as to their disposition.

26 **Patient 17:**

27 a. On August 30, 2008, at 9:56 a.m., Respondent withdrew one tablet of Percocet 5
28 for Patient 17. Fifty-two minutes later, at 10:48 a.m., Respondent withdrew another Percocet

1 tablet for Patient 17. However, Respondent did not record on Patient 17's MAR the
2 administration of either of these medications. Instead she recorded on the MAR that at 3:00 p.m.,
3 she administered two Percocet tablets to Patient 17. There was no notation on the pain flow sheet
4 that these medications were administered nor any documentation as to their disposition.

5 **Patient 2:**

6 a. On October 17, 2008, at 8:11 a.m., Respondent withdrew one Norco 5 for Patient 2.
7 However, there was no documentation by Respondent that this medication was administered on
8 the MAR. The medication was noted as being given on the pain flow sheet.

9 **Patient 4:**

10 a. At approximately 11:12 a.m., on October 2, 2008, Respondent withdrew Norco 5 for
11 Patient 4. However, there was no documentation regarding the disposition of this medication.

12 **Patient 7:**

13 a. On September 14, 2008, at 10:21 a.m., Respondent withdrew one tablet of
14 Percocet 5 for Patient 7. However, there was no documentation regarding the disposition of this
15 medication.

16 SECOND CAUSE FOR DISCIPLINE

17 (Gross Negligence/Incompetence - Administration of Controlled Substances More Frequently
18 Than Ordered and/or Given Without a Physician Order)

19 15. Respondent is subject to discipline under Code section 2761(a)(1), on the grounds of
20 gross negligence and/or incompetence in that while employed as a registered nurse at Santa Rosa
21 Memorial Hospital, in Santa Rosa, California, she administered controlled substances to patients
22 under her care, more frequently than ordered by the physician and/or without a physician's order.
23 The facts in support of this cause for discipline are as follows:

24 **Patient 3:**

25 a. On June 19, 2008, Patient 3's physician ordered Norco 5, one tablet every three hours
26 prn for moderate pain or Norco 10, one tablet every three hours prn for severe pain.

27 b. On June 21, 2008, at 8:30 a.m., Respondent noted on the pain flow sheet that she had
28 administered one tablet of Norco 10 to Patient 3, who was then discharged home by her physician

1 at 9:00 a.m. However, after being discharged, Respondent at 10:11 a.m., withdrew one tablet of
2 Norco 10 under Patient 3's name.

3 **Patient 16:**

4 a. Patient 16 was admitted to Santa Rosa Memorial Hospital on August 26, 2008, for
5 a vaginal hysterectomy. Post-surgically, her physician ordered Norco 5, one tablet every three
6 hours prn for moderate pain or Norco 10, one tablet every three hours prn for severe pain.

7 b. On August 28, 2008, at 9:30 a.m., Respondent administered one tablet of Norco 5
8 to Patient 16. Approximately one and one-half hours later, at 11:02 a.m., Respondent withdrew
9 one tablet of Norco 10 for Patient 16. Four minutes later, at 11:06 a.m., she withdrew one tablet
10 of Norco 5, and at 12:51 p.m., she again withdrew one tablet of Norco 5 for Patient 16.

11 THIRD CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct – Grossly Inconsistent and/or Unintelligible Entry in Hospital Records)

13 Failure to Document Disposition of Controlled Substances)

14 16. Respondent is subject to discipline under Code section 2761(a), on the grounds of
15 unprofessional conduct as defined in Code section 2762 (e), in that while employed as a
16 registered nurse at Santa Rosa Memorial Hospital in Santa Rosa, California, she failed to account
17 for controlled substances withdrawn for patients under her care. The facts in support of this cause
18 for discipline are as follows:

19 **Patient 3:**

20 a. On June 21, 2008, at 8:30 a.m., Respondent noted on the pain flow sheet that she
21 had administered one tablet of Norco 10 to Patient 3. However, there was no reference on the
22 MAR that Patient 3 had received Norco 10.

23 b. On June 21, 2008, at 9:00 a.m., Patient 3 was discharged home. At 10:11 a.m.,
24 Respondent withdrew one tablet of Norco 5 for Patient 3. However, Respondent failed to
25 account for disposition of this medication in any hospital or patient record.

26 **Patient 10:**

27 a. On August 7, 2008, at 8:03 a.m., Respondent at withdrew one tablet of Norco 5
28

1 for Patient 10. However, Respondent failed to account for disposition of this medication in any
2 hospital or patient record.

3 **Patient 15:**

4 a. On August 28, 2008, at 10:05 a.m., Respondent withdrew one tablet of Norco 5
5 for Patient 15. However, Respondent failed to account for disposition of this medication in any
6 hospital or patient record.

7 **Patient 16:**

8 a. On August 28, 2008, at 9:30 a.m., Respondent administered one tablet of Norco 5
9 to Patient 16. At 11:02 a.m., Respondent withdrew one tablet of Norco 10 for Patient 16. Four
10 minutes later, at 11:06 a.m., she withdrew one tablet of Norco 5, and at 12:51 p.m., she again
11 withdrew one tablet of Norco 5 for Patient 16. However, Respondent did not record on Patient
12 16's MAR that she had administered any of these medications. In addition, for the medications
13 withdrawn at 11:02 a.m., and at 11:06 a.m., there was no notation on the pain flow sheet that
14 these medications were administered.

15 **Patient 17:**

16 a. On August 30, 2008, at 9:56 a.m., Respondent withdrew one tablet of Percocet 5 for
17 Patient 17. Fifty-two minutes later, at 10:48 a.m., Respondent withdrew another tablet of
18 Percocet 5 for Patient 17. However, Respondent did not record on Patient 17's MAR the
19 administration of either of these medications. Instead she recorded on the MAR that at 3:00 p.m.,
20 she administered two Percocet tablets to Patient 17. There was no notation on the pain flow sheet
21 that these medications were administered nor any documentation as to their disposition.

22 **Patient 2:**

23 a. On October 17, 2008, at 8:11 a.m., Respondent withdrew one Norco 5 for Patient 2.
24 However, there was no documentation by Respondent that this medication was administered on
25 the MAR. The medication was noted as being given on the pain flow sheet.

26 **Patient 4:**

27 a. At approximately 11:12 a.m., on October 2, 2008, Respondent withdrew one tablet of
28

1 Norco 5 for Patient 4. However, there was no documentation regarding the disposition of this
2 medication.

3 **Patient 7:**

4 a. On September 14, 2008, at 10:21 a.m., Respondent withdrew one tablet of
5 Percocet 5 for Patient 7. However, there was no documentation regarding the disposition of this
6 medication.

7 PRAYER

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Registered Nursing issue a decision:

10 1. Revoking or suspending Registered Nurse License No. 515000 issued to Linda
11 Ann Memmer, aka Linda Ann Sparkes.

12 2. Ordering Linda Ann Memmer, aka Linda Ann Sparkes to pay the Board of
13 Registered Nursing reasonable costs of the investigation and enforcement of this case, pursuant to
14 Business and Professions Code section 125.3.

15 3. Taking such other and further action as deemed necessary and proper.

16
17 DATED: 6/3/2011

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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